

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR - 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re applications of)	MM Docket No. 92-310
)	
BARBARA BRINDISI)	File No. BPH-910703MI
)	
LAURYN BROADCASTING CORPORATION)	File No. BPH-910703MJ
)	
For a Construction Permit)	
for a New FM Station on Channel)	
36.5A in Beaumont, California)	

The gist of Sadlier-Gill's amendment was to propose an alternate site which would eliminate the mutual exclusivity between her application and those of Brindisi and Lauryn. On March 2, the Mass Media Bureau filed comments in support of Sadlier-Gill's petitions. It appears that grant of Sadlier-Gill's Petition for Leave to Amend would clear the way to sever her application from this proceeding and at the same time, simplify this proceeding. To that end, Brindisi and Lauryn request the Presiding Judge to grant Sadlier-Gill's Petition for Leave to Amend and her Motion for Severance and Grant.

Brindisi and Lauryn have agreed to settle their differences rather than to continue to litigate. The parties have entered into a Settlement Agreement (which is submitted herewith) pursuant to which Brindisi would pay Lauryn up to \$5,000 (but not more than Lauryn's reasonable and legitimate expenses incurred in the preparation and prosecution of its application, and not more than approved by the Commission) in exchange for Lauryn's request to dismiss its application.

The Settlement Agreement includes an Exhibit A containing an itemized listing of Lauryn's reasonable and legitimate expenses. The expenses shown exceed \$5,000. Therefore, it appears that Lauryn can receive the maximum amount of \$5,000 promised in the Settlement Agreement. The Settlement Agreement also includes language in Paragraph 8 to satisfy the requirements of Section 73.3525(a) of the Commission's rules regarding the applicants' certifications as to consideration, motivation and the benefit to the public interest to be derived from the settlement.


There are no basic disqualifying issues pending against Brindisi. Brindisi was required by the Hearing Designation Order to file an amendment to her application to demonstrate that the operation of her proposed station would have no detrimental affect upon the operation of a nearby FM translator station. Brindisi filed this amendment (with a Petition for Leave to Amend) on February 23, 1993, showing that no detriment would be caused to the translator station. The Mass Media Bureau supported the grant of Brindisi's February 23 Petition for Leave to Amend in comments filed on March 4, 1993. Brindisi requests that the Presiding Judge promptly grant her Petition for Leave to Amend. With the grant of this Petition, there would remain no apparent obstacle to the grant of Brindisi's application.

The grant of this Joint Request would serve the public interest because time-consuming and expensive litigation would be avoided. This is would conserve the resources of the parties and of the Commission, and it would permit the sooner initiation of a new broadcast service for the community of Beaumont, California.

WHEREFORE, Brindisi and Lauryn respectfully urge the Presiding Judge (1) to grant Sadlier-Gill's Petition for Leave to Amend and her Motion for Severance; (2) to approve the attached Settlement Agreement between Brindisi and Lauryn; (3) to dismiss Lauryn's application with prejudice; and (4) to grant Brindisi's application.

Respectfully submitted,

BARBARA BRINDISI

By: 
Donald E. Martin

DONALD E. MARTIN, P.C.
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5070

Her Attorney

LAURYN BROADCASTING CORPORATION

By: 
Cary S. Tepper 

MEYER, FALLER, WEISMAN & ROSENBERG
Suite 380
4400 Jenifer Street, N.W.
Washington, D.C. 20015
(202) 362-1100

Its Attorney

April 7, 1993

SETTLEMENT AGREEMENT

This Agreement is made by and between Barbara Brindisi ("Brindisi"), a resident of California whose address is 21055 Elmwood Street, Perris, California 92570, and Lauryn Broadcasting Corporation ("Lauryn"), a California corporation whose address is 137 South San Fernando Boulevard, No. 433, Burbank, California 91502 (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, Brindisi has an application pending before the Federal Communications Commission ("Commission" or "FCC") requesting authority to construct a new FM broadcast station at Beaumont, California on Channel 265A (File No. BPH-910703MI); and,

WHEREAS, Lauryn has a mutually exclusive application pending with the FCC for the same facilities (File No. BPH-910703MJ); and

WHEREAS, Kay Sadlier-Gill ("Sadlier-Gill") has a mutually exclusive application pending with the FCC for authority to modify the facilities of station KATY-FM, Idyllwild, California (File No. BPH-910611IF); and

WHEREAS, Sadlier-Gill has filed a Petition for Leave to Amend and a Motion for Severance and Grant which, if granted, would resolve the mutual exclusivity between her application and those of Brindisi and Lauryn; and

WHEREAS, the Parties wish to avoid further costly and lengthy litigation; and

WHEREAS, the Parties believe that the settlement proposal herein would be in the public interest because it would resolve

this proceeding and allow the prompt initiation of a new FM broadcast service at Beaumont, California; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the FCC;

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

1. The Parties will file a Joint Request with the FCC, pursuant to Section 73.3525 of the Commission's rules, seeking:

- a. the approval of this Agreement;
- b. the dismissal with prejudice of Lauryn's application;
- c. the grant of Brindisi's application with no condition materially adverse to Brindisi.

The Parties shall submit with the Joint Request a copy of this Agreement executed by the Parties together with all supporting

and prudent costs as approved by the FCC incurred by Lauryn in the preparation and prosecution of its above-identified application, but not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) ("Settlement Price"). An itemized accounting of Lauryn's expenses is attached hereto as Exhibit A.

4. Within five (5) business days of executing this Agreement, Brindisi shall deposit funds in an amount equal to the Settlement Price into an escrow account held by her counsel, Donald E. Martin, P.C. Documentation of said deposit shall be promptly provided to Lauryn. Said funds shall be held in escrow until paid to Lauryn pursuant to this Agreement or otherwise until the termination of this Agreement. The Settlement Price is to be paid to Lauryn within fifteen (15) days following the release by the FCC of an order (the "Order"), or the last of a series of orders, or other documents, approving this Agreement, severing the application of Sadlier-Gill from this proceeding (or otherwise disposing of the Sadlier-Gill application), and granting Brindisi's application with no conditions materially adverse to Brindisi, and such Order having become final. The Order shall be deemed to be final when it is no longer subject to further administrative or judicial reconsideration, review or appeal.

5. Brindisi shall not be obligated to pay the Settlement Price or any portion thereof except as specifically provided in this Agreement.

6. This Agreement is expressly subject to approval by the FCC.

10. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, successors and assigns.

11. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

12. This Agreement shall be governed by and construed under the laws of the State of California.

13. Any notices or other communications required or permitted hereunder shall be delivered personally or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

To Brindisi:

Barbara Brindisi
21055 Elmwood Street
Perris, California 92570

with copy to:

Donald E. Martin, Esquire
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036.

To Lauryn:

Lauryn Cox, President
Lauryn Broadcasting Corporation
137 South San Fernando Boulevard
No. 433
Burbank, California 91502

with copy to:

Cary S. Tepper, Esquire
Meyer, Faller, Weisman & Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015.

14. Each party hereto expressly warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such party's legal ability to perform its obligations hereunder.

15. Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

16. If by the date one year from the date that this Agreement is submitted to the FCC for its approval, the FCC has not released an order which has become final approving this Agreement, either party may terminate this Agreement by providing written notice to the other. In such case, the Parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below:

14. Each party hereto expressly warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such party's legal ability to perform its obligations hereunder.

15. Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

16. If by the date one year from the date that this

EXHIBIT A

As of March 18, 1993, Lauryn Broadcasting Corporation had incurred the following expenses in the preparation, filing and prosecution of its Beaumont, California FM application (FCC File No. BPH-910703MJ):

Gary S. Smithwick, Esq. (Legal)	\$4,000.00
Cary S. Tepper, Esq. (Legal)	\$8,774.00
Bromo Communications, Inc. (Engineer)	\$5,000.00
FCC Application Filing Fee	\$2,030.00
FCC Hearing Fee	\$6,760.00
Nathanial Montague (Broadcast Consultant)	\$5,000.00

Total	\$31,564.00

CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 7th day of April, 1993, that I have caused a copy of the foregoing document to be served by United States Mail with first class postage prepaid upon the following:

- * Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

- Robert Zauner, Esquire
Hearing Branch
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

- Cary S. Tepper, Esquire
Meyer, Faller, Weisman & Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
Counsel for Lauryn Broadcasting
Corporation

- Eric S. Kravetz, Esquire
Brown, Finn & Nietert
1920 N Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Kay Sadlier-Gill


Donald E. Martin

* Served by hand delivery.